



Amy G. Rabinowitz  
*Counsel*

July 3, 2003

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

**Re: D.T.E. 01-106**

Dear Secretary Cottrell:

On behalf of Massachusetts Electric Company and Nantucket Electric Company (collectively "Mass. Electric" or "Company"), I am enclosing for filing the Company's comments on legal impediments and justifications for utility participation in a computer matching program with the Executive Office of Health and Human Services ("EOHHS") that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

Thank you very much for the opportunity to provide these comments.

Very truly yours,

Amy G. Rabinowitz

cc: Service List

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Investigation by the Department of Telecommunications and Energy on its own Motion pursuant to G.L. c. 159, §105 and G.L. c. 164, §76 to investigate increasing the penetration rate for discounted electric, gas and telephone service	) ) ) ) ) )	D.T.E. 01-106
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## I. INTRODUCTION

The Department now seeks comment on the following briefing question:

Please discuss any legal impediment and legal justification for utility participation in a computer matching program with EOHHS that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

Massachusetts Electric Company and Nantucket Electric Company (collectively “Mass. Electric” or “Company”) hereby provide the Department with comments on this briefing question.

## **II. DISCUSSION**

Mass. Electric strongly supports the Department’s effort to increase the penetration rate for discounted electric, gas, and telephone services. Mass. Electric cautions the Department, however, that the proposal set forth above raises concerns about the violation of residential customers’ privacy rights. In addition, it will create costs for Mass. Electric.

### **A. PRIVACY ISSUES**

First of all, there are privacy concerns connected with the utilities releasing information to state agencies. In order to do the match, the EOHHS will need sufficient information about each residential customer to perform the match. Sufficient information no doubt includes the customer’s name and address. In the context of the Department’s investigation into competitive market initiatives, the Department determined that addresses and rate classes are not proprietary to the utility. DTE 01-54, p. 5. Presumably, this determination included customer names as well. Names and addresses often will not be sufficient, however. Mass. Electric understands that social security numbers, as unique identifying numbers, would be particularly effective for comparing the utility’s list to the EOHHS list. Not only does Mass. Electric not have the social

security numbers for a lot of customers and not have the legal authority to require customers to provide this number to the Company, however, but the Social Security Administration considers the release of social security numbers a clearly unwarranted invasion of personal privacy. 20 CFR 402.100.

In addition, the EOHHS is a public agency, and its records are subject to the Public Records Law, Mass. Gen. Laws c. 66, § 10. Thus, once it had possession of Mass. Electric's customer list, it would be required to turn that list over to any member of public requesting it. That EOHHS is a public agency makes the proposed release of customer information to it very different than the distribution companies' release of customer information to competitive suppliers pursuant to the Department's competitive market initiatives docket, D.T.E. 01-54. Competitive suppliers enter into confidentiality agreements with Mass. Electric prior to receiving any customer lists. Because they are not public entities, they are able to keep the customer lists confidential. The EOHHS could not enter into a similar confidentiality agreement, though, because of the Public Records Law.

Mass. Electric notes that the Attorney General recommends that the utilities give customers advance notice of the release of the customer list and an opportunity to opt out of participation. Mass. Electric agrees with this recommendation, but cautions the Department that customers are not all likely to read the opt out notification and respond, despite an unwillingness to have their information shared with a state agency.

The Massachusetts Community Action Program Directors Association and the Massachusetts Energy Directors Association (collectively, "MASSCAP") argue that the Department's proposal does not give rise to any privacy issues, citing the Texas and New

York matching programs, where “no party has vigorously argued that matching programs violate customers’ rights to privacy.” MASSCAP brief, p. 4, ftnt 1. These programs are not analogous to the Massachusetts proposal, though, because they do not involve sharing utility customer lists with government agencies other than the utility’s regulatory commission. In Texas, pursuant to 16 TAC §25.454, a utility commission appointed independent administrator receives two lists: (1) the names and addresses of customers receiving benefits from the Texas Department of Human Services and (2) a list of residential customers from the Electric Reliability Council of Texas. The independent administrator compares those lists, develops a list of eligible customers, and shares that list with the utilities. Not only does the utility not give out any customer information, but the rules also provide that all data transfers be conducted under the terms and conditions of a confidentiality agreement so as to protect customer privacy. In New York, as well, as MASSCAP describes in its January 31, 2002 comments (p. 23), a state agency compiles an electronic file containing identifying information on all households receiving public assistance benefits, and provides that list to Verizon. Here, too, Verizon is not providing any customer information to the state.

There are also privacy concerns connected with the state agencies releasing information to the utilities. The Department of Transitional Assistance cannot give out personal data. 220 CMR 104.000 et seq. The Division of Medical Assistance cannot release information except in direct connection with the administration of medical assistance programs, and cannot release names of applicants and recipients. Mass. Gen. Laws c. 118E § 49. In addition, the federal Health Insurance Portability and Accountability Act also sets forth privacy requirements. Mass. Electric acknowledges

that if the state agencies received authority from their recipients to release information satisfactory to those state agencies, that obstacle could be removed.

## **B. RATE RECOVERY**

Mass. Electric notes that the implementation of this proposal will be costly to Mass. Electric and the other utilities. At the April 29, 2003 technical session, the Department indicated that the utilities would be responsible for the administrative costs that they incurred, and would also be responsible for reimbursing the state agencies for their costs. In addition, Mass. Electric's revenue will decrease as customers switch to the low-income rate. If the impact to Mass. Electric is \$1 million or more, it will constitute an exogenous factor under Mass. Electric's rate plan settlement in D.T.E. 99-47, and Mass. Electric will be entitled to rate recovery.

## **III. CONCLUSION**

Mass. Electric appreciates this opportunity to provide comments to the Department.

Respectfully submitted,

MASSACHUSETTS ELECTRIC  
COMPANY  
NANTUCKET ELECTRIC COMPANY

By \_\_\_\_\_  
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Dated: July 3, 2003